

**THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

ERNANI FORCHETTI,

Civil Division

Plaintiff,

No. 13-1479

v.

Judge Robreno

CHEYNEY UNIVERSITY  
OF PENNSYLVANIA,

Defendant.

JURY TRIAL DEMANDED

**PLAINTIFF'S PRETRIAL MEMORANDUM**

Plaintiff, Ernani Forchetti, by undersigned counsel, files this Pretrial Memorandum as follows:

**I. NATURE OF THE ACTION AND JURISDICTION**

This is an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. § 955(a). Plaintiff, Ernani Forchetti, alleges Defendant, Cheyney University of Pennsylvania, failed to hire him because of his race and his age.

Defendant invoked the jurisdiction of this Court by removing this action from the Court of Common Pleas of Chester County pursuant to 28 U.S.C. § 1441. This Court has original jurisdiction over the Title VII claim pursuant to 28 U.S.C. §§ 1331 and 1343(a)(4), and has supplemental jurisdiction over the PHRA claim pursuant to 28 U.S.C. § 1337.

**II. FACTUAL STATEMENT**

Defendant failed to hire Ernani Forchetti, a 62-year-old Caucasian individual, for an adjunct faculty position teaching Health and Wellness courses. Instead, Defendant hired two 26-year-old

African American individuals with substantially less education and experience in the subject matter they were hired to teach.

Forchetti holds both a Bachelor's and a Master's degree in Health and Physical Education. He also has a Doctor of Chiropractic degree, and a Diplomat of Acupuncture degree. Forchetti taught Health, Fitness, and Wellness related classes at West Chester University, also part of the State System of Higher Education, from 1996 to 2002. In 2009, he was a professor of Sport Science at Delaware State University. He also taught Health and Physical Education at the high school level for four years. From 2000 to 2002, he taught Anatomy and Physiology at the Maryland Institute of Traditional Chinese Medicine. He has coached football at the high school and college levels, and was the starting quarterback on a varsity football team in college. For twelve years, Forchetti practiced as a chiropractor. He has also practiced as an acupuncturist.

Defendant Cheyney is part of the Pennsylvania State System of Higher Education. It holds itself out as the "oldest of the Historically Black Colleges and Universities in America." Defendant's student population is approximately 99 percent Black/African American.

Cheyney has a Department of Hospitality, Tourism, and Leisure Management ("Department"). Following the retirement of two tenured professors in the Spring and Summer of 2011, only two full-time faculty members remained in the Department: Dr. Judith Ray, the Department Chair, and Dr. Gregory Smith.

In late July 2011, Department Chair Ray contacted Forchetti about teaching courses in her department following the retirement of two tenured professors. Later that week, Forchetti met with Ray. The two then decided Forchetti should teach 5 sections of the Health and Wellness course. Ray later also assigned Forchetti a Weight Training and Jogging class.

On August 3, 2011, Dean Larnell Flannagan signed a “Temporary Faculty and Staff Personnel Requisition and Hiring Approval Form,” authorizing the hire of Forchetti. The next day, Provost Ivan Banks also signed the form.

On or about August 4, 2011, Forchetti went to Human Resources, completed an application packet, and spoke with HR Director Jo-Anne Harris. Along with his application, Forchetti also submitted a “Supplement to the Application for Cheyney University of Pennsylvania Positions,” which disclosed his race as Caucasian (non-Hispanic), and his age as over 59.

Provost Banks instructed Ray to send a ballot to Smith, asking him to vote on the adjunct faculty candidates. If Smith did not respond, Banks gave Ray permission to proceed with the people she wanted to hire.

On August 5, 2011, Ray sent Smith an email with an attached “Emergency Department Vote” ballot. The ballot contained the names of 9 candidates, including Forchetti. *Id.* On August 9, 2011, Smith responded to Ray’s email. Among other things, Smith stated:

even as to temporary faculty members, what is their academic preparation, background, degrees, credentials, etc. Do any of the persons on the list you have presented me possess at least a masters degree in the discipline in which they will be expected to teach? ... [I]n order to make an informed decision/vote on temporary faculty members, it is imperative that I review the curriculum vita’s [sic], resumes, letters of recommendation and transcripts of each candidate.

After a response from Provost Banks, Smith reiterated the importance of reviewing the “curriculum vitas [sic], resumes, letters of recommendation and transcripts of each candidate.”

Only after Smith received the ballot from Dr. Ray and responded with the above emails, candidates Hassan Muhammad and Zakiya Newton applied for adjunct faculty positions. Both Muhammad and Newton were 26-year-old African American individuals. Both were also former undergraduate students of Smith at Cheyney.

Muhammad graduated from Cheyney in May 2007 with a B.A. in Recreation and Leisure Management. He then attended a graduate program in Recreation Administration Southern Illinois University (SIU) from the Fall of 2007 to the Spring of 2009. He does not have a degree from SIU, and did not complete his Master's thesis.

Muhammad served as a teaching assistant at SIU. For two to three weeks, he taught a Leadership (Recreation) course while the professor was absent. Other than teaching the Leadership course for two to three weeks, he had no other teaching experience.

Following his attendance at SIU, Muhammad worked as a behavioral health counselor. He never discussed with Smith what his job as a behavioral health counselor entailed. Smith did not know about any experience Muhammad may have had between leaving SIU in 2009 and applying to Cheyney in 2011.

Muhammad took a Health and Wellness course at Cheyney. According to Smith, Muhammad would have taken that course sometime between 2003 and 2007, probably closer to his Freshman year in 2003. Other than that, he has not taken any courses in health and wellness. He also never took a course on how to teach an activities course.

Smith admits he told Muhammad and Newton about the retirements of former Professors Flynn and/or Thorpe, and the potential faculty position openings. He testified he probably called Muhammad so he would know about the openings, and if it was something he wanted to pursue, he could do so. Muhammad testified Smith told him about Flynn and Thorpe's retirements via text message. Although both deny that Smith encouraged Muhammad to apply for a position, Muhammad wrote on his application that a "CU Employee" referred him. Muhammad admitted the "CU Employee" was Smith.

The first record of Muhammad contacting anyone at Cheyney about an adjunct position was on August 10, 2011, when he emailed Ray and copied Smith and Harris. This was the same day Smith sent the above email to Banks.

On August 18, 2011, Defendant received Muhammad's application for employment, dated August 16, 2011. On August 19, Muhammad sent a copy of his unofficial transcript. The same day, a supervisor of Muhammad faxed one letter of recommendation to Cheyney.

Newton received a Bachelor of Science in Recreation from Cheyney University in July 2008. She then received a Master of Science in Recreation from SIU in May 2010. Her application indicates she "assisted tenured and non-tenured faculty members with preparing lessons" at SIU. The application contains no other indication of any teaching experience. It also stated she seasonally worked for the City of Philadelphia Department of Parks and Recreation, and worked at Drexel University managing and monitoring the paperwork process for new and re-hire employees. Smith was not aware of Newton taking any additional health and wellness courses other than the Health and Wellness course offered at Cheyney.

Newton first expressed interest in a position at Cheyney on July 25, 2011, in response which Provost Banks asked for her resume/curriculum vitae. Newton said she would submit the documents when she had them available. On August 10, 2011, Newton again sent an email expressing interest, stating she "would be delighted to send her resume and letter of recommendations," suggesting she had not yet done so. Newton finally submitted an application for employment on August 17, 2011. Newton apparently did not submit a resume or any letters of recommendation in connection with her application.

Sometime between August 10 and 19, 2011, Smith went to the Human Resources office

and reviewed applications for the adjunct position. Smith looked at everything in the file for Forchetti and the other applicants. As such, Smith knew Forchetti was an acupuncturist and a chiropractor; had a Master's and a Bachelor's degree in Health and Physical Education; and taught at West Chester University. He also knew Forchetti taught Health and Wellness at the high school and college levels. While Smith did not know Forchetti's exact age, he testified he could assume his approximate age based on the dates he was in school.

On August 19, 2011, Smith sent an email to President Howard-Vital, copying various individuals, stating Muhammad and Newton had "been approved by the regular full-time faculty members," i.e., himself. Smith did not share his recommendations with Ray prior to sending them to the President. However, the Chair's review of the recommendations was required by the collective bargaining agreement.

Smith recommended Muhammad teach three sections of Health and Wellness, one section of Volleyball and Basketball, one section of Volleyball and Football, and one section of Leadership in Modern Society. He recommended that Newton teach three sections of Health and Wellness, one section of Leadership I, and one section of Sport and Society. Following changes in the schedule for the Fall 2011 semester, Muhammad was recommended to teach two sections of Health and Wellness; two sections of Weight Training and Jogging; one section of Tennis and Basketball; one section of Golf and Volleyball; one section of Volleyball and Basketball; and one section of Leadership I. Newton was recommended to teach four sections of Health and Wellness; one section of Weight Training and Jogging; one section of Tennis and Basketball; one section of Volleyball and Basketball; and one section of Football and Volleyball.

Smith admitted Forchetti would be "more qualified" to teach Health and Wellness and

physical activities courses than Newton and Muhammad, and not just “equally qualified. He also admitted Muhammad and Newton did not have graduate or undergraduate degrees related to health and wellness.

Smith claimed he relied on Pennsylvania Act 182 in making hiring recommendations. However, Act 182 requires at least three years of teaching experience. *See 24 P.S. § 1864.2.* Smith readily admitted Muhammad and Newton did not have three years’ teaching experience. He then claimed that for temporary hires, he relied on Act 182 “for academic purposes,” “but not relative to experience.”

Following Smith’s recommendations, Ray told Provost Banks, Dean Flannagan, and President Howard-Vital she did not believe Muhammad and Newton were qualified. In response, Provost Banks told her Muhammad and Newton were two young people the school wanted to mentor and to move forward in the profession, and she was stopping their progress. Banks told Ray to “back off” because Muhammad and Newton were going to be hired. According to Banks, he told Ray “you’re not born as an old professor. You know, all of us, including myself, at one time we were young professors and, you know, as young people that doesn’t make us unqualified.”

With respect to temporary hires, Banks was the president’s designee with full authority to hire. According to Banks, he felt like his “hands were sort of tied with Greg Smith being the only person who could vote.” He thought he could only make a recommendation for an appointment of one semester if there was a tie in the hiring committee, which could not happen in the situation of Smith being a “committee of one.”

On Saturday, August 27, 2011, Ray called Forchetti and informed him Smith had recommended two other individuals and Cheyney was going to hire them. However, Ray also told

Forchetti to come in the following Monday and be prepared to teach because she did not know if the people selected were going to show up.

On August 29, 2011, Forchetti arrived at Cheyney. Ray, who was visibly upset, told Forchetti he was not going to be hired. Ray also told Forchetti that Smith would not want a white, strong male in his department. She also said Smith was a racist, angry person who wanted to hire two African Americans because they would support him and give him more power to undermine Ray.

Later that day, Forchetti met separately with both Dean Flannagan and Provost Banks, and expressed his concern that less qualified people were hired. In response, Banks told Forchetti young people need to start somewhere.

On August 30, 2011, Newton and Muhammad signed their teaching contracts. The same day, Flannagan notified Smith and Ray via email that Muhammad and Newton had been given an overload, meaning they were scheduled to teach more than 12 hours. In the email, Flannagan asked whether Smith would like to consider someone else in the recreation pool to take on 2.97 credit hours. Smith responded to the email, criticizing Dr. Flannagan, but he did not answer whether he wanted to consider anyone else for 2.97 hours.

Although Smith did not recommend Professors Herbert Black or Shawn Murray to teach Hospitality classes, Defendant hired them over Smith's objection. Both Black and Murray are African American.

Smith also did not recommend for hire Dr. Karin Volkwein-Caplan. Caplan was a full professor at West Chester University who wanted to teach one course at Cheyney in addition to her course load at West Chester. Ray planned for Caplan to teach the Leadership I course, eventually

taught by Muhammad. However, Smith did not recommend her for hire, and that recommendation was not overridden. Caplan is white.

Ray sent an email to Dean Flannagan, copying Provost Banks, President Howard-Vital, and others, stating, *inter alia*:

Whatever exception was made for Professors Black and Murray should be made for Dr. Ernie Forchetti and Dr. Caplan. Both Drs. Forchetti and Caplan have terminal degrees in the discipline, years of teaching experience, and willing to teach the major courses that need covering. I cannot under any circumstance imagine why unseasoned professionals would be given a work overload instead of such skilled and competent individuals as Forchetti and Caplan.

Banks and Flannagan told Ray the exception made for Black and Murray would not be made for Forchetti.

### **III. DAMAGES**

Plaintiff's salary had he been hired for the position of Health and Wellness adjunct professor would have been as follows:

Fall 2011-Spring 2012 Academic Annual Salary: \$44,795.24  
Fall 2012-Spring 2013 Academic Annual Salary: \$45,243.19  
Fall 2013-Spring 2014 Academic Annual Salary: \$45,695.62  
Total Backpay Salary Loss: \$135,734.05

See documentation attached hereto as Exhibit "A".

Additionally, Plaintiff would have been entitled to Health and Welfare Contributions in the amounts as follows:

2011-2012 \$1077.50  
2012-2013 \$1077.50  
2013-2014 \$1131.40

Total Health and Welfare Contributions: \$3,286.40

See documentation attached hereto as Exhibit "B".

**Total Backpay Salary Loss with Health and Welfare Contributions: \$139,020.45**

Plaintiff also has a forward-looking wage loss of \$46,609.53 per year, and a forward-looking benefit loss of \$1,131.40 per year, for a total loss of **\$47,740.93** for the Fall 2014-Spring 2015 school year. Plaintiff will seek back pay for this amount should a trial be scheduled following the start of the Fall 2014 semester. Otherwise, Plaintiff will seek front pay in amount to be determined by the Court.

Plaintiff reserves the right to supplement, as damages are ongoing.

#### **IV. WITNESSES - LIABILITY**

##### **A. Plaintiff Will Call**

1. Ernani Forchetti  
1575 S. W. Egret Way  
Palm City, FL 34990
2. Dr. Gregory Smith  
Cheyney University of Pennsylvania  
1837 University Circle  
P.O. Box 200  
Cheyney, PA 19319

##### **B. Plaintiff May Call**

3. Judith Ray  
410 Hannum Avenue  
West Chester, PA 19380
4. Jo-Anne Harris  
Cheyney University of Pennsylvania  
1837 University Circle  
P.O. Box 200  
Cheyney, PA 19319
5. Hassan Muhammad  
Cheyney University of Pennsylvania  
1837 University Circle  
P.O. Box 200  
Cheyney, PA 19319
6. Ivan Banks  
201 Berryman Road  
Apartment 92  
Vicksburg, MS 39180

7. Larnell Flannagan  
Grambling State University  
403 Main Street  
Grambling, LA 71245

**V. WITNESSES - DAMAGE**

**A. Plaintiff Will Call**

1. Ernani Forchetti  
1575 S. W. Egret Way  
Palm City, FL 34990

**B. Plaintiff May Call**

2. Margaret Forchetti  
1575 S. W. Egret Way  
Palm City, FL 34990

**VI. EXHIBITS**

**A. Plaintiff Will Offer**

1. Resume of E. Forchetti (EF 4)
2. Instructor Faculty Pool (DEF 319-321)
3. 2007-11 Faculty Collective Bargaining Agreement Excerpt (EOC 23-27)
4. 8/16/11 Email C. Sciecinski to M. Robinson re: classes by Professor (DEF 552)
5. Temporary Faculty & Staff Personnel Requisition and Hiring Approval re: Dr. Ernani V. Forchetti (DEF 153)
6. 8/4/11 Application for Employment re: E. Forchetti (DEF 60-78)
7. 8/5/11 Email J. Ray to G. Smith; I. Banks; J. Harris; H. Black; L. Flannagan re: electronic vote for Adjunct Professor 2011-2012 (EOC 100-101)
8. 8/9/11-8/10/11 Emails between G. Smith and I. Banks re: electronic vote (EOC 105-108)
9. 8/18/11 Facsimile Application for Employment re: H. Muhammad (DEF 98-102)

10. 8/10/11 Email A. Muhammad to J. Ray re: teaching positions with Forward J. Harris to B. Grove (DEF 103-104)
11. 8/19/11 Facsimile Sheet from H. Muhammad to J. Harris (DEF 110)
12. 8/19/11 Reference Letter from M. Wyckoff, LSW re: H. Muhammad (DEF 109)
13. 7/25/11 Email Z. Newton to Cheyney President re: faculty position in recreation with Reply from I. Banks and Forward 8/11/11 M. Robinson to B. Grove (DEF 128-129)
14. 8/10/11 Email Z. Newton to J. Ray re: temp faculty position - transcripts attached with FW: M. Robinson to B. Grove (DEF 130)
15. Application for Employment re: Z. Newton (DEF 117-120)
16. Resume for Zakiya Newton (DEF 121)
17. Second Resume for Zakiya Newton (DEF 122-123)
18. Fall, 2011 - Spring, 2013 Department Age and Race Report
19. Transcripts of Zakiya Newton (DEF 132-134)
20. 8/19/11 Email G. Smith to M. Howard-Vital re: temporary faculty pool (EOC 118)
21. 8/28/11 Email G. Smith to J. Ray re: follow-up from list of voted temp part-time hospitality faculty (AM 4-10)
22. 2011/Fall Section Schedule (DEF 708-709)
23. 8/29/11 Email J. Ray to L. Flannagan; I. Banks; M. Howard-Vital; B. Wright; J. Grubbs re: Wload Assignments (DEF 555-556)
24. 8/26/11 Letter M. Howard-Vital to Z. Newton re: temporary appointment (DEF 114-115)
25. 8/26/11 Letter M. Howard-Vital to H. Muhammad re: temporary appointment (DEF 92-93)
26. 8/31/11 Email G. Smith to L. Flannagan re: recreation part-time faculty with overloads (AM 42-43)
27. 8/2/11 Temporary Faculty & Staff Personnel Requisition and Hiring Approval re: H Muhammad (DEF 94) .

28. Temporary Faculty & Staff Personnel Requisition and Hiring Approval re: Z. Newton (DEF 116)
29. Defendant's Responses to Plaintiff's Second Interrogatories and Requests for Production of Documents Directed to Defendant, No. 2
30. Errata Sheet to Gregory Smith's deposition part 1
31. Resume of Hassan Muhummad (DEF 97)
32. 7/1/11 to 6/30/15 Agreement between Association of Pennsylvania State College and University Facilities (APSCUF) and The Pennsylvania State System of Higher Education (State System) (DEF 156-318)
33. Copy of Act 182, 24 P.S. § 1864.2

**B. Plaintiff May Offer**

Plaintiff's First Interrogatories and Request for Production of Documents Directed to Defendant including any and all responses

Spreadsheet and Ethnicity Report Responsive to Interrogatory #1

Plaintiff's Second Interrogatories and Request for Production of Documents Directed to Defendant including any and all responses

9/21/11 Memo E. Forchetti to R. Traymham re: 9/26/11 Council of Trustees meeting (EF 1)

Statement by E. Forchetti at 9/26/11 Council of Trustees meeting (EF 2-3)

Cheyney University's Website Vision & Mission Statements (EF 5)

Excerpt from the Agreement between APSCUF and State System (EF 6-7)

9/26/11 Council of Trustees Minutes of Quarterly Public Meeting (EF 8-9)

5/20/13 Email E. Forchetti to J. Cebelak re: posted positions in Health Science Department (EF 10)

8/30/11 Job Application for Athletic Director at Cheyney University with attachments (EF 11-29)

Plaintiff's Resume (EF 30)

Resume of Zakiya Newton (EF 31)

7/25/11 Email Z. Newton to Cheyney President re: faculty position in recreation with Reply by I. Banks (EF 32)

8/10/11 Email H. Muhammad to J. Ray re: teaching position with Forward J. Harris to B. Grove (EF 33-34)

8/24/11 Email M. Robinson to L. Flannagan re: names of faculty for REC courses and HRM course cancellations with Reply (EF 35)

8/24/11 Emails between L. Flannagan and M. Robinson re: vote on p-t faculty (EF 36-38)

8/25/11 Email from J. Ray re: urgent resolution needed with Reply by J. Harris (EF 39)

8/25/11 Email from J. Ray re: urgent resolution needed with Reply by L. Flannagan (EF 40-41)

8/25/11 & 8/26/11 Emails L. Flannagan to J. Ray; I. Banks; M. Robinson; C. Sciecinski re: adjunct teaching (EF 42)

8/28/11 Email L. Flannagan to J. Ray; C. Sciencinski; J. Harris; M. Robinson re: fall schedule (EF 43)

8/26/11 Email G. Smith to J. Ray; L. Flannagan re: follow-up from list of voted temp part-time hospitality faculty with 8/29/11 Reply from J. Ray (EF 44-46)

8/25/11 Email L. Flannagan to J. Ray re: lacking teach experience with 8/29/11 Reply from J. Ray and Forward by J. Ray (EF 47)

8/30/11 Email L. Flannagan to J. Ray; G. Smith re: recreation part-time faculty with overload (EF 48)

8/30/11 Email J. Ray to L. Flannagan; J. Harris; M. Robinson re: lacking teach experience (EF 49)

8/30/11 Email J. Ray to L. Flannagan re: recreation part-time faculty with overloads with Reply (EF 50)

9/12/11 Emails between E. Almonte and J. Ray re: Ernest Forchetti (EF 51)

10/9/11 Email J. Ray to E. Forchetti re: FW: Act 182 (EF 52-53)

Notes of Ernani Forchetti (EF 54-63)

Photo of Cheyney University V.P. Finance and Administration sign (EF 64)

“Welcome Message from President” from cheyney.edu (EF 65)

“About Cheyney” from cheyney.edu (EF 66-67)

“The Mission of Cheyney University” from cheyney.edu (EF 68)

8/4/11 Application for Employment with attachments re: E. Forchetti (DEF 1-19)

2/29/12 Email from S. Yao re: microsoft online training announcement (DEF 20-22)

Applicant File for Jo-Anne Harris (DEF 23-88)

- a. 8/4/11 Emails between J. Harris and J. Ray re: applicant (DEF 24-25)
- b. 9/1/11 Email J. Harris to E. Forchetti re: application for director of athletics with Reply (DEF 26)
- c. 8/25/11 Email L. Flannagan to J. Ray; I. Bank; M. Robinson; C. Sciecinski re: adjunct teaching with 8/26/11 Email L. Flannagan to J. Ray; I. Banks; M. Robinson; C. Sciecinski; J. Harris re: adjunct teaching (DEF 27)
- d. 8/12/11-8/13/11 Emails between J. Harris and L. Flannagan re: hiring process issues (DEF 28-30)
- e. Postal Note re: enclosed found loose in the mail with attachments (DEF 31-33)
- f. 3/4/13 Email R. Dixon to A. St. Ledger re: Ernani Forchetti v. Cheyney University with complaint coversheet (DEF 34-35)
- g. 8/4/11 Application for Employment with attachments re: E. Forchetti (DEF 36-54)
- h. 2/29/12 Handwritten Note (DEF 55)
- i. 8/23/11 Email L. Flannagan to B. Shields; D. James re: names of faculty for REC Courses and HEM course cancellations with Forward to M. Robinson and 8/24/11 Email M. Robinson to L. Flannagan (DEF 56-57)
- j. Instructor Faculty Pool with handwritten notes (DEF 58-59)
- k. 2/29/12 Email from S. Yao re: microsoft online training announcement (DEF 79-81)
- l. 9/21/11 Employee/Labor Relations Handwritten Note re: E. Forchetti (DEF 82)
- m. 9/6/11-9/9/11 Emails between R. Dixon; B. Wright; I. Banks; J. Harris re: phone message (DEF 83-84; 87-88)
- n. Handwritten Notes re: E. Forchetti (DEF 85-86)

Personnel File for Hassan Muhammad (DEF 89-110)

- a. 8/29/11 Employee Data Information re: H. Muhammad (DEF 90)
- b. 8/29/11 Memo H. Muhammad to Office of Human Resources re: university property (DEF 91)
- c. 8/26/11 Draft of Letter M. Howard-Vital to H. Muhammad re: temporary appointment with handwritten notes (DEF 95-96)
- d. Unofficial Student Academic Record re: H. Muhammad (DEF 105-108)

Personnel File for Zakiya Newton (DEF 111-134)

- a. 8/29/11 Employee Data Information re: Z. Newton (DEF 112)
- b. 8/29/11 Memo Z. Newton to Office of Human Resources re: university property (DEF 113)
- d. Application for Employment with attachments re: Z. Newton (DEF 117-126)
- e. 8/25/11 Email Z. Newton to J. Harris; M. Robinson re: temporary faculty position (DEF 127)
- f. Transcript of Z. Newton (DEF 131)

Curriculum Vitae for Karin A. E. Volkwein, Ph.D. (DEF 135-140)

7/13/11 CV for Tammy C. James, Ph.D., CHES (DEF 141-150)

Temporary Faculty & Staff Personnel Requisition and Hiring Approval re: Shawn Murray (DEF 151)

Temporary Faculty & Staff Personnel Requisition and Hiring Approval re: Dr. Tammy C. James (DEF 152)

Resume of Dr. Forchetti (DEF 154)

Temporary Faculty & Staff Personnel Requisition and Hiring Approval re: Herbert Black (DEF 155)

12/9/09 Policy on Affirmative Action Statement (DEF 322-323)

2/17/09 Policy on Nondiscrimination (DEF 324)

Procedures for the Appointment of Faculty (DEF 325-331)

9/26/11 Council of Trustees Minutes of Quarterly Public Meeting (DEF 332-335)

Class Scheduling Form for Hospitality & Leisure (DEF 336-338)

4/20/12 Letter A. St. Ledger to W. Cook re: position statement (DEF 339)

12/1/11 Notice of Charge of Discrimination re: E. Forchetti (DEF 340)

4/20/12 Position Statement of Respondent Cheyney University with Exhibits (DEF 341-438)

EEOC Mediation (DEF 439-440)

2/27/12 Email A. St. Ledger to M. Robinson re: FW: scanned document from legal (DEF 441)

2/22/12 Notice of Charge of Discrimination re: E. Forchetti (DEF 442)

10/27/11 Charge of Discrimination re: E. Forchetti (DEF 443-444)

Mediation Invitation Response Form re: E. Forchetti (DEF 445)

Request for Information (DEF 446)

Notice of Settlement (DEF 447)

Request for Information and Request for Position Statement (DEF 448-449)

10/27/11 Information for Complainants & Election Option to Dual File with the PHRC re: E. Forchetti (DEF 450)

Information on Charges of Discrimination (DEF 451)

Misc. Handwritten Notes re: applicants (DEF 452-453)

Personnel File of Zakiya Newton (additional docs) (DEF 454-467)

- a. 1/3/13 Temporary APSCUF Requisition & Hiring re: Z. Newton (DEF 455)
- b. 12/5/12 Approval re: Z. Newton (DEF 456)
- c. 11/26/12 Approval re: Z. Newton (DEF 457)
- d. 10/24/12 Letter M. Howard-Vital to Z. Newton re: temporary appointment (DEF 458-459)
- e. 11/6/12 Temporary APSCUF Requisition & Hiring re: Z. Newton (DEF 460)
- f. 10/17/12 Email I. Turnipseed to C. Sciecinski re: REC staffing meeting followup (DEF 461)
- g. 11/16/11 Temporary APSCUF Requisition & Hiring re: Z. Newton (DEF 462)
- h. 11/3/11 Email from G. Smith re: temporary faculty recommendations for Spring Semester 2012 with handwritten note by J. Ray (DEF 463)
- i. 12/21/11 Letter M. Howard-Vital to Z. Newton re: temporary appointment (DEF 464-465)
- j. 1/23/13 Letter M. Howard-Vital to Z. Newton re: temporary appointment (DEF 466-467)

7/30/11 Email E. Forchetti to J. Ray re: resume (DEF 468-469)

9/2/11 Memo I. Banks to M. Howard-Vital re: chronology of events (DEF 470-474)

8/22/10 Emails between L. Flannagan; J. Ray and G. Smith re: vote on p-t faculty (DEF 475)

8/26/11 Email G. Smith to L. Flannagan re: follow-up from list of votes temp part-time

hospitality faculty with Reply (DEF 476)

3/23/11-8/2/11 Email Chain re: acceptable recreation faculty schedule (DEF 477-483)

8/5/11 Email J. Ray to G. Smith; I. Banks; J. Harris; H. Black, L. Flannagan re: electronic vote for Adjunct Professors 2011-2012 with 8/9/11 Reply from G. Smith (DEF 484-486)

8/5/11-8/10/11 Email Chain re: electronic vote for Adjunct Professors 2011-2012 (DEF 487-491)

8/12/11 Email J. Harris to G. Smith re: update (DEF 492)

8/16/11 Emails between G. Smith; J. Ray; L. Flannagan re: Fall 2011 REC SCHEDULE (DEF 493-494)

8/16/11 Email C. Sciecienski to G. Smith; J. Ray; L. Flannagan re: inform Dr. Smith of new schedule with 8/17/11 Reply from G. Smith (DEF 495-496)

8/19/11 Email G. Smith to M. Howard-Vital re: approval of applicants (DEF 497)

8/19/11 Email G. Smith to J. Ray re: electronic vote for Adjunct Professors 2011-2012 second request (DEF 498-500)

8/22/11 Email L. Flannagan to J. Ray; G. Smith re: vote on p-t faculty with Reply from G. Smith (DEF 501)

8/25/11-9/2/11 Emails between L. Flannagan; G. Smith; J. Ray re: follow-up from list of voted temp part-time hospitality faculty (DEF 502-507)

3/18/13 Email Chain re: Forchetti lawsuit (DEF 508-509, 512-513)

3/4/13 Email Chain re: Ernani Forchetti vs. Cheyney University (DEF 510-511)

9/1/11 Email J. Harris to E. Forchetti re: application for director of athletics with Reply (DEF 514)

8/25/11-8/26/11 Emails from L. Flannagan to J. Ray; I. Banks; M. Robinson; C. Sciecienski; J. Harris re: adjunct teaching (DEF 515)

8/13/11 Email Chain re: hiring process issues (DEF 516-518)

Postal Note re: enclosed found loose in the mail (DEF 519)

8/4/11 Application for Employment re: E. Forchetti with attachments (DEF 520-539)

8/23/11-8/24/11 Email Chain re: names of faculty for REC courses and HRM course cancellations (DEF 540-541)

8/4/11 Email C. Sciecinski to L. Flannagan re: class schedule fall 2011 (DEF 542)

8/4/11 Email J. Harris to J. Ray re: applicant with 8/5/11 Reply (DEF 543)

8/5/11 Email J. Ray to G. Smith; I. Banks; J. Harris; H. Black; L. Flannagan re: electronic vote for Adjunct Professors 2011-2012 (DEF 544)

8/9/11 Email I. Banks to G. Smith; J. Ray; J. Harris; H. Black; L. Flannagan; M. Howard-Vital re: electronic vote for Adjunct Professors 2011-2012 (DEF 545-547)

8/15/11 Email L. Flannagan to J. Ray; D. James re: request to hire form and vita on Dr. Caplan (DEF 548)

8/15/11 Emails between L. Flannagan and J. Harris re: request to hire form and vita on Dr. Caplan (DEF 549; 551)

8/20/11 Email C. Sciecinski to J. Ray re: temporary faculty (DEF 553-554)

8/30/11 Email L. Flannagan to C. Sciecinski; D. James re: job description for tenure-professional position (DEF 557-559)

8/23/11 Email E. Forchetti to C. Sciecinski re: course syllabi with 8/24/11 Reply (DEF 560)

Personnel File of Patricia Walker (DEF 561-600)

12/9/09 Policy on Affirmative Action Statement (DEF 601-602)

2/17/09 Policy on Nondiscrimination (DEF 603)

Resume of Herbert C. Black (DEF 604)

Curriculum Vitae of Herbert Black (DEF 605)

Resume of Christine Scott Metcalf (DEF 606; 607)

Resume of Derrick Lewis-EL (DEF 608-609)

Resume of Rhoda L. Johnson (DEF 610)

Resume of Michael Blakeney (DEF 611-613)

Resume of Patricia Ann Bartley-Walker (DEF 614-616)

Resume of Marilyn Stephens (DEF 617-618)

Curriculum Vitae of Tammy C. Jones, Ph.D., CHES (DEF 619-628)

Curriculum Vitae of Christopher Lopez (DEF 629-634)

Resume of Leslie E. Thomas, Jr. (DEF 635-636)

Salary Information re: H. Muhammad (DEF 637)

Salary Information re: Z. Newton (DEF 638-641)

Course Syllabus for Volleyball and Basketball (DEF 642-643)

Course Syllabus for Tennis and Basketball (DEF 644)

Course Syllabus for Leadership 1 (DEF 645-647)

Fall, 2011 Course Syllabus for Golf & Volleyball (DEF 648)

Course Syllabus for Health & Wellness (DEF 649-651; 652-654; 655-657; 658-660)

8/4/11 Email C. Sciecinski to L. Flannagan re: class schedule Fall 2011 (DEF 661)

8/4/11 Email J. Harris to J. Ray re: applicant with 8/5/11 Reply (DEF 662)

8/5/11 Email J. Ray to G. Smith; I. Banks; J. Harris; H. Black; L. Flannagan re: electronic vote for Adjunct Professors 2011-2012 (DEF 663)

8/9/11 Email I. Banks to G. Smith; J. Ray; J. Harris; H. Black; L. Flannagan; M. Howard-Vital re: electronic vote for Adjunct Professors 2011-2012 (DEF 664-666)

8/15/11 Email L. Flannagan to J. Ray; D. James re: request to hire form and vita on Dr. Caplan (DEF 667)

8/15/11 Email J. Harris to L. Flannagan re: request to hire form and vita on Dr. Caplan with Reply (DEF 668)

8/16/11 Email C. Sciecinski to M. Robinson re: classes by Professor (DEF 669)

8/20/11 Email C. Sciecinski to J. Ray re: temporary faculty (DEF 670-671)

8/29/11 Email J. Ray to L. Flannagan; I. Banks; M. Howard-Vital; B. Wright; J. Grubbs re: Wload assignments (DEF 672-673)

8/30/11 Email L. Flannagan to C. Sciecienski; D. James re: job description for tenure-professional position (DEF 674-676)

Courses taught by H. Muhammad and Z. Newton during Fall 2011 (DEF 677)

Director of Athletics Position Deleted 8/12/11 (DEF 678-679)

Syllabus for Volleyball & Basketball REC-127 (DEF 680-681)

Syllabus for Health REC-111 (DEF 682-683; 684-685)

Syllabus for Tennis & Basketball REC-118 (DEF 686)

Syllabus for Leadership I REC-319 (DEF 687-689)

Syllabus for Golf & Volleyball REC-120 (DEF 690)

Syllabus for Health & Wellness REC-111 (DEF 691-693; 694-696; 697-699; 700-702)

3/18/11 Email I. Banks to L. Flannagan re: teaching schedule for the Fall (DEF 703-704)

2011/Spring Section Schedule (DEF 705)

Fall, 2011 Department Class Scheduling Form for Hospitality and Leisure (DEF 706-707)

Fall, 2011 Department Class Scheduling Form for Professional Studies (DEF 710-726)

3/23/11 Email L. Flannagan to J. Ray; N. Thorp; G. Smith re: acceptable recreation faculty schedule with Reply from G. Smith (DEF 727-729)

3/18/11 Email I. Banks to L. Flannagan re: teaching schedule for the Fall with Forward (DEF 730-731)

3/23/11 Email L. Flannagan to J. Ray; N. Thorp; G. Smith re: acceptable recreation faculty schedule (DEF 732-734)

6/3/08 Email J. Ray to C. Gilchrist re: AWON (DEF 735)

6/5/08 Email J. Ray to C. Gilchrist; B. Carter re: potential conflict with Dr. Smith with Replies from B. Carter; S. Wilson (DEF 736-737; 738-739)

10-16-08 Note re: G. Smith (DEF 740)

6/30/09 Email G. Smith to J. Ray re: dismissing your class 25 minutes early with Reply from J. Ray to I. Banks; M. Howard-Vital (DEF 741-742)

5/4/09 Email J. Ray to G. Smith re: final exam week leave of absence with Reply (DEF 743)

6/19/09 Email J. Ray to G. Smith re: absences SSI with Reply (DEF 744)

7/27/11 Email J. Ray to L. Flannagan; M. Howard-Vitale re: abandonment of duty with Reply from L. Flannagan (DEF 745)

9/9/08 Email J. Ray to G. Smith re: missed classes with Reply (DEF 746)

7/7/08 Email E. Atkinson to J. Ray re: Aquarius sheet music from Eve (DEF 747)

8/16/11-8/18/11 Email Chain re: inform Dr. Smith of new schedule (DEF 748-751)

8/22/11-8/24/11 Email Chain re: vote on p-t faculty (DEF 752-755)

8/4/11-8/12/11 Emails Chain re: class schedule for Fall 2011 (DEF 756-758, 759-760, 761-762, 765-766)

8/8/11 Email J. Ray to C. Sciecinski re: emergency department vote on adjuncts (DEF 763)

8/4/11 Email from C. Sciecinski re: course scheduling form (DEF 764)

10/4/11-10/5/11 Email Chain re: credential rating sheet self appraisal (DEF 767-769, 770-771)

3/18/11 Email from I. Banks re: teaching schedule for the Fall (DEF 772-773)

12/26/13 Email G. Smith to S. Unger re: Forchetti addl discovery attached (DEF 774)

12/26/13 Email G. Smith to S. Unger re: credential scoring rating sheet (DEF 775-778)

Gregory Smith Verizon Response (DEF 779)

8/10/11 Email A. Muhammad to J. Ray re: teaching position (DEF 780-781)

8/11/11 Email G. Smith to M. Robinson; J. Harris re: FW: teaching position (DEF 782-783)

1/8/14 Email S. Unger to C. Elzer re: Forchetti-Smith subpoena response complete (DEF 784)

8/10/11 Email A. Muhammad to J. Ray re: teaching position (AM 1)

8/25/11 Email G. Smith to J. Harris re: Temporary Faculty (AM 2-3)

8/28/11 Email from G. Smith re: fall schedule (AM 11-12)

8/29/11 Email from L. Flannagan re: syllabi with attachments (AM 13-41)

2013-2014 Recreation and Leisure Management Curriculum Worksheet (G. Smith Vol. II Depo. Ex. 8)

State College Faculty Compensation Plan (G. Smith Vol. II Depo. Ex. 10)

Leadership I Rec - 319 Syllabus (H. Muhammad Depo. Ex. 6)

Rec - 111 Syllabus (H. Muhammad Depo. Ex. 7)

Records of the EEOC (EEOC 1-134) including:

- a. 2/22/13 Letter S. Lewis, Jr. to C. Elzer re: FOIA request (EEOC 1-4)
- b. 1/30/13 Letter S. Lewis, Jr. to C. Elzer re: FOIA request (EEOC 5)
- c. 11/26/12 Transmittal to Department of Justice of Request for Notice of Right to Sue re: E. Forchetti (EEOC 6)
- d. 11/26/12 Letter F. Watson to S. Cordes re: Right to Sue request (EEOC 7)
- e. 11/26/12 Letter F. Watson to S. Cordes re: request (EEOC 8; 10)
- f. 11/15/12 Letter C. Elzer to D. Johnson re: Right to Sue request (EEOC 9)
- g. 11/26/12 Letter C. Elzer to Intake Desk re: filings (EEOC 11)
- h. 10/27/11 Charge of Discrimination re: E. Forchetti (EEOC 12-13)
- i. 12/1/11 Notice of Charge of Discrimination re: E. Forchetti (EEOC 14; 15)
- j. 2/22/12 Letter W. Cook to E. Forchetti re: receipt of charge (EEOC 16)
- k. 2/22/12 Charge Transmittal re: E. Forchetti (EEOC 17)
- l. 10/27/11 Information for Complainants & Election Option to Dual File with the PHRC re: E. Forchetti (EEOC 18)
- m. 5/23/12 Facsimile Letter C. Elzer to D. Johnson re: rebuttal to position statement (EEOC 19-28)
- n. 4/27/12 Letter D. Johnson to E. Forchetti re: charge (EEOC 29-30)
- o. 10/27/11 Affidavit re: E. Forchetti (EEOC 31-33)
- p. 2/16/12 Letter C. Baldwin to S. Cordes re: intake questionnaire (EEOC 34-35)
- q. 10/27/11 Mediation Yes/No Form re: E. Forchetti (EEOC 36; 37)
- r. 11/20/12 Recommendation for Closure re: E. Forchetti (EEOC 38)
- s. 4/20/12 Letter A. St. Ledger to W. Cook re: position statement (EEOC 39)
- t. 4/20/12 Position Statement re: E. Forchetti with exhibits (EEOC 40-126)
- u. Exhibit A - 8/1/11 Application for Employment with resume re: E. Forchetti (EEOC 51-55)
- v. Exhibit A - 6/13/11 Letter of Recommendation by K. Volkwein-Caplan re: E.

- Forchetti (EEOC 56)
- w. Exhibit A - 2/15/78 Letter of Recommendation by G. Baldwin re: E. Forchetti (EEOC 57)
- x. Exhibit A - 10/31/78 Memo A. Nader to E. Forchetti re: commendation (EEOC 58)
- y. Exhibit A - 5/16/78 Letter of Recommendation by W. Kottmeyer re: E. Forchetti (EEOC 59)
- z. Exhibit A - 2/16/78 Letter of Recommendation by P. Thompson re: E. Forchetti (EEOC 60)
- aa. Exhibit A - 6/13/11 Letter of Recommendation by A. Leonzi re: E. Forchetti (EEOC 61)
- bb. Exhibit A - Course W-1-1, Basic Science 1 (EEOC 62)
- cc. Exhibit A - West Chester State College Academic Record re: E. Forchetti (EEOC 63)
- dd. Exhibit A - Transcript re: E. Forchetti (EEOC 64-66)
- ee. Exhibit A - Maryland Institute of Traditional Chinese Medicine, Inc. Transcript re: E. Forchetti (EEOC 67-69)
- ff. Exhibit A - 9/26/11 Cheyney University of Pennsylvania, Council of Trustees, Minutes of the Quarterly Public Meeting (EEOC 70-72)
- gg. Exhibit B - Instructor Faculty Pool (EEOC 74-76)
- hh. Exhibit C - 8/26/11 Letter M. Howard-Vital to H. Muhammad re: temporary appointment (EEOC 78-79)
- ii. Exhibit C - 8/10/11 Email H. Muhammad to J. Ray re: teaching position with Forward J. Harris to B. Grove (EEOC 80-81)
- jj. Exhibit C - Resume of H. Muhammad (EEOC 82)
- kk. Exhibit C - 8/16/11 Application for Employment re: H. Muhammad (EEOC 83-87)
- ll. Exhibit C - Recommendation Letter by M. Wyckoff re: H. Muhammad (EEOC 88)
- mm. Exhibit C - 8/26/11 Letter M. Howard-Vital to Z. Newton re: temporary appointment (EEOC 89-90)
- nn. Exhibit C - Application for Employment re: Z. Newton (EEOC 91-93)
- oo. Exhibit C - Resume of Z. Newton (page 2 only) (EEOC 94)
- pp. Exhibit C - 8/25/11 Email Z. Newton to J. Harris; M. Robinson re: temporary faculty position (EEOC 95)
- qq. Exhibit C - 7/25/11 Emails between Z. Newton and Cheyney President/I. Banks re: faculty position in recreation with 8/9/11 Forward to J. Harris with Reply and 8/11/11 Forward M. Robinson to B. Grove (EEOC 96-97)
- rr. Exhibit C - 8/10/11 Email Z. Newton to J. Ray re: temp faculty position - transcripts attached with 8/11/11 Forward G. Smith to J. Harris and 8/11/11 Forward J. Harris to B. Grove (EEOC 98)
- ss. Exhibit D - 8/9/11 Email from G. Smith re: electronic vote with Reply from I. Banks (EEOC 102-104)
- tt. Exhibit D - 8/12/11 Email J. Harris to G. Smith re: update with 8/15/11 Reply and 8/15/11 Forward J. Harris to J. Ray ; 8/16/11 Forward L. Flannagan to J. Harris; J. Ray and Reply from J. Ray (EEOC 109-112)
- uu. Exhibit D - 8/17/11 Email from I. Banks re: inform Dr. Smith of new schedule with

- 8/18/11 Reply from J. Ray (EEOC 113)
- vv. Exhibit D - 8/16/11 Email C. Sciecinski to G. Smith; J. Ray; L. Flannagan re: inform Dr. Smith of new schedule (EEOC 114)
- ww. Exhibit D - 8/19/11 Email G. Smith to J. Ray re: second request (EEOC 115-117)
- xx. Exhibit D - 8/23/11-8/24/11 Emails between L. Flannagan; B. Shields; D. James; M. Robinson; J. Ray; J. Harris; I. Banks re: names of faculty for REC courses and HRM course cancellations (EEOC 119-121)
- yy. Exhibit D - 8/25/11 and 8/26/11 Emails from L. Flannagan to J. Ray; I. Banks; M. Robinson; C. Sciecinski re: adjunct teaching (EEOC 122)
- zz. Exhibit D - 8/22/11 Email G. Smith to J. Harris; M. Robinson re: voting with Reply from L. Flannagan (EEOC 123)
- aaa. Exhibit D - 8/22/11-8/24/11 Emails re: vote on p-t faculty (EEOC 124-126)
- bbb. 4/4/12 Letter A. St. Ledger to W. Cook re: copy of charge (EEOC 127)
- ccc. 4/6/12 Facsimile F. Watson to A. St. Ledger re: request (EEOC 128-129)
- ddd. 3/21/12 Facsimile A. St. Ledger to W. Cook re: extension (EEOC 130)
- eee. 2/22/12 Mediation Invitation Response Form re: E. Forchetti (EEOC 131)
- fff. Request for Information (EEOC 132)
- hhh. Notice of Settlement (EEOC 133)
- iii. Request for Information and Request for Position Statement (EEOC 134)

## **VII. TRIAL**

Trial by jury, lasting approximately 3 days for the Plaintiff's case in chief.

## **VIII. STIPULATIONS**

After inquiring with Defendant's counsel via email on May 15, 2014, it appears there are no facts to which the parties wish to stipulate.

## **IX. AUTHENTICITY AND ADMISSIBILITY**

Plaintiff has no objection to the authenticity of those Exhibits listed on Defendant's Pretrial Memorandum. Plaintiff also has no objection to the admissibility of those Exhibits, except to the extent that they may be offered as self-serving hearsay; to the extent that an individual without personal knowledge of the Exhibits attempts to testify to their contents; or to the extent they are not relevant.

## **X. DEPOSITION DESIGNATIONS**

Plaintiff designates the following excerpts to the extent they are admissible under the Federal Rules of Evidence. Plaintiff anticipates that Dr. Ivan Banks and Dr. Larnell Flannagan will be outside this Court's subpoena power because they reside out of state. See Fed. R. Civ. P. 32(a)(4)(B). Dr. Judith Ray lives in the area, but may be "unavailable" under Fed. R. Civ. P. 32(a)(4)(C) and Fed. R. Evid. 804(a)(4) due to her ill health. Plaintiff will attempt to communicate with Dr. Ray to determine

whether she will be available for trial.

Deposition of Ivan Banks taken October 15, 2013

Page 57/ln 12-Page 58/ln 16  
Page 58/ln 23-Page 59/ln 10  
Page 73/ln 4-74/ln 14  
Page 78/ln 4-Page 79/ln 9  
Page 80/ln 10-18  
Page 99/ln 4-9

Deposition of Larnell Flannagan taken December 6, 2013

Page 3/ln 22-23  
Page 9/ln 8-11/ln 12  
Page 52/ln 16-53/ln 24  
Page 62/ln 1-62/ln 24  
Page 63/ln 7-64/ln 13

Videotape Deposition of Judith Ray taken September 30, 2013

Page 5/ln 10-11  
Page 6/ln 16-7/n 6  
Page 16/ln 21-23  
Page 19/ln 7-24  
Page 20/ln 14-22/ln 1  
Page 45/ln 5-Page 46/ln 4  
Page 64/ln 12-Page 65/ln 15

**Defendant's Counter-Designations:** Plaintiff's counsel emailed the above designations to Defendant's counsel on May 28, 2014, and requested Defendant's counter-designations. On June 4, 2014, Defendant's counsel emailed Plaintiff's counsel the same designations that appear in Defendant's Pretrial Memorandum. Those excerpts do not appear to be counter-designations to Plaintiff's excerpts, but rather appear mostly to be affirmative evidence to be offered by Defendant. Thus, Plaintiff requests that Defendant's designations be admitted, if at all, during Defendant's case-in-chief, rather than during Plaintiff's case-in-chief.

**Plaintiff's Counters to Defendant's Designations:**

Deposition of Dr. Banks:

Page 50/ln 21-Page 52/ln 2  
Page 91/ln 1-91/ln 10  
Page 97/ln 2-98/ln 8

Respectfully submitted,

**Samuel J. Cordes & Associates**

/s/ Christine T. Elzer

Samuel J. Cordes  
Christine T. Elzer

Pa. I.D. No. 54874 (Cordes)  
Pa. I.D. No. 208157 (Elzer)

245 Fort Pitt Boulevard, 2<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
(412) 281-7991

Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on June 9, 2014, a copy of the foregoing *Plaintiff's Pretrial Memorandum* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Christine T. Elzer  
Christine T. Elzer  
Attorney for Plaintiff